

REMARKS

Claims 1-24 are currently pending in the subject application and are presently under consideration. Claims 1, 4, 7, 10, 13, 14, 16, 19, and 24 have been amended as shown on pp. 2-12 of the Reply. Claims 15 and 20 have been canceled without prejudice or disclaimer. Claim 25 is new. Applicants' submit that no new matter has been inserted into the application due to the new claims or amendments.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Double Patenting

Claims 1-24 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-32 of co-pending U.S. Patent Application 10/809,559. However, applicants' Terminal Disclaimer is being filed concurrently herewith in the present application over co-pending U.S. Patent Application 10/643,215, which is believed to render this rejection moot. Reconsideration and withdrawal of the rejection under the judicially created doctrine of obviousness-type double patenting is respectfully requested in view of Applicants' current Terminal Disclaimer.

II. Rejection of Claims 13 and 24 Under 35 U.S.C §102(e)

Claims 13 and 24 stand rejected under 35 U.S.C. §102(e) as being anticipated by Keaney *et al.* (U.S. 7,062,703 B1), Rios (U.S. 2004/0125775 A1), and Lin (U.S. 6,725,015 B1). Independent claims 13 and 24 now incorporate elements from dependent claims 15 and 16, which the Examiner has cited as being allowable on page 18 of the Office Action. Therefore, it is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Keaney *et al.*, Rios, and Lin do not teach or suggest every limitation of applicants' claimed invention.

A single prior art reference anticipates a patent claim only if it expressly or inherently describes *each and every* limitation set forth in the patent claim. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ...

claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The subject application relates to data communication between wireless stations. The claimed invention provides for two different protocols for upstream and downstream data transmission. In particular, claim 13 (and similarly independent claim 24) recites *wherein protocols are selected at least in part based upon one or more attributes of the client device and... the access point device, wherein the one or more attributes... include a sensitivity of a receiver...and include a transmitter strength of a transmitter..., and wherein if the receiver of the client device has a higher sensitivity than the... access point device, the 802.11g protocol is selected for transmitting upstream data.*

Keaney *et al.*, Rios, and Lin relate to symmetrically using multiple protocols for transmitting and receiving data from devices. As the Examiner has conceded on page 18 of the Office Action, Keaney *et al.*, Rios, and Lin do not disclose using different protocols for upstream and downstream data transmission where protocols are selected based on receiver sensitivity and transmitter strength. Moreover, the cited art does not disclose selecting a higher data rate for upstream data transmission if the receiver of the client device has a higher sensitivity than the receiver of the access point device. In contrast, the subject application as claimed provides for using two distinct protocols for upstream and downstream transmission of data, where protocols are chosen based on a comparison of receiver sensitivities and transmitter strengths of the client and access point devices.

In view of at least the above, it is respectfully submitted that Keaney *et al.*, Rios, and Lin do not teach or suggest applicants' invention as recited in independent claims 13 and 24. Thus, Keaney *et al.*, Rios, and Lin fail to anticipate the subject claims. Accordingly, withdrawal of this rejection is respectively requested.

III. Rejection of Claims 1-12 Under 35 U.S.C. §103(a)

Claims 1-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Keaney *et al.* in view of Rios. Independent claims 1, 4, 7, and 10 now incorporate elements from dependent claims 15 and 16, which the Examiner has cited as being allowable on page 18 of the Office Action. Therefore, it is respectfully submitted that this rejection should be withdrawn for

at least the following reasons. Keaney *et al.* and Rios, alone or in combination, fail to teach or suggest each and every limitation of applicants' claimed invention.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In particular, independent claim 1 recites *wherein a transmit processing section... is one of either the 802.11b or OFDM processing sections, wherein the transmit processing section is defined at least in part based upon one or more attributes of the client wireless module and... the access point wireless module, wherein the one or more attributes... include a sensitivity of a receiver... and include a transmitter strength of a transmitter..., and wherein if the receiver of the client wireless module has a higher sensitivity than the... access point wireless device, the OFDM processing section is selected as the transmit processing section.* Moreover, claim 1 (and similarly 4, 7, and 10) recite features similar to independent claims 13 and 24; and as noted *supra*, Keaney *et al.* and Rios are deficient with respect to these claims.

In view of at least the foregoing, it is readily apparent that Keaney *et al.* and Rios, alone or in combination, do not teach or suggest applicants' invention as recited in independent claims 1, 4, 7 and 10. Accordingly, it is requested that this rejection with respect to independent claims 1, 4, 7, and 10 and claims 2, 3, 5, 6, 8, 9, 11, and 12 that respectively depend therefrom be withdrawn.

IV. Rejection of Claims 29-32 Under 35 U.S.C. §103(a)

Claims 14, 17-19, and 22-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Keaney *et al.*, in view of Rios in further view of either Arviv *et al.* (U.S.

2003/0045307) or Onggosanusi *et al.* (U.S. 2003/0210750). Independent claims 14 and 19 now incorporate elements from dependent claims 15 and 20, which the Examiner has cited as being allowable on page 18 of the Office Action. Therefore, it is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Keaney *et al.*, Rios, and Arviv *et al.* or Onggosanusi *et al.*, alone or in combination, fail to teach or suggest each and every limitation of applicants' claimed invention.

In particular, claim 14 recites *wherein the first and second protocols are selected at least in part based upon one or more attributes of the client wireless module and... the access point wireless module, wherein the one or more attributes... include a sensitivity of a receiver... and include a transmitter strength of a transmitter..., and wherein if the receiver of the client wireless module has a higher sensitivity than the... access point wireless module, a wireless communications protocol having a higher data rate is selected for the first protocol.* Moreover, claims 14 and 19 recite features similar to independent claims 13 and 24; and as noted *supra*, Keaney *et al.* and Rios are deficient with respect to these claims.

Arviv *et al.* discloses a system in which the signal to noise ratio of a receive signal is used in determining the modulation scheme. Arviv *et al.* does not teach selection of the modulation scheme based on receiver sensitivity of the client wireless modules and receiver sensitivity of the access point wireless modules.

Onggosanusi *et al.* teaches encoding and decoding methods for parallel input and multiple output streams of wireless data. Onggosanusi *et al.* does not teach selection of the first protocol based on a comparison of receiver sensitivity between client and access point wireless modules.

In view of at least the foregoing, it is readily apparent that Keaney *et al.* and Rios in view of either Arviv *et al.* or Onggosanusi *et al.*, alone or in combination, do not teach or suggest applicants' invention as recited in independent claims 14 and 19. Accordingly, it is requested that this rejection with respect to independent claims 14 and 19 and claims 17, 18, 22, and 23 that respectively depend therefrom be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [QUALP693US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

AMIN, TURNEY & CALVIN, LLP

/Himanshu S. Amin/

Himanshu S. Amin

Reg. No. 40,894

AMIN, TURNEY & CALVIN, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731